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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:
RAYMOND W. CLANTON
LOREN F. SELZNICK
El Rio, California

MM DOCKET NO. 93-87

DATE OF HEARING: January 12, 1994

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In the matter of:)

RAYMOND W. CLANTON)

LOREN F. SELZNICK)

El Rio, California)
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MM DOCKET NO. 93-87

The above-entitled matter came on for hearing pursuant to notice before Judge John M. Frysiak, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Wednesday, January 12, 1994 at 10:00 a.m.

APPEARANCES:

On behalf of Raymond W. Clanton:

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JOHN NEELY, Esquire
Miller and Miller, P.C.
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On behalf of Loren F. Selznick:

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Pepper and Corazzini
Suite 200
1776 K Street, N.W.
Washington, D.C. 20006

I N D E X

<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Loren F. Selznick				
By Mr. Thompson	30			
By Mr. Miller		61		
By Mr. Thompson			136	
By Mr. Miller				147

E X H I B I T S

	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
<u>SELZNICK</u>			
No. 4	31	39	
No. 5	39	60	
<u>CLANTON</u>			
No. 2	46	48	
No. 3	120	120	

Hearing Began: 10:03 a.m. Hearing Ended: 3:52 p.m.
 Lunch Break Began: 12:08 p.m. Lunch Break Ended: 1:15 p.m.

P R O C E E D I N G S

JUDGE FRYSIAK: May we note your appearances on the record?

MR. THOMPSON: On behalf of Raymond W. Clanton, Jerrold Miller and John Neely.

MR. MILLER: Good morning, Your Honor. On behalf of Loren F. Selznick, I'm Robert Thompson with the law firm Pepper and Corazzini.

JUDGE FRYSIAK: Any preliminary matters?

MR. THOMPSON: Just one minor matter, Your Honor. Last week, on the 7th of January, we filed on behalf of Ms. Selznick two documents. We filed a Petition for Leave to Amend and a revised amendment and we filed an opposition to Mr. Clanton's Motion for Summary Decision and Dismissal. The actual, physical amendment, we had discovered, was collated in Document 2 and does not actually appear attached to the Petition for Leave to Amend.

So that today, what we're doing is refiling with the Commission and your office properly conformed copies so that the petition and then the amendment right behind it and all the exhibits appear as one document and we felt that would be easier than filing copies of the revised amendment and asking you to attach them or anything like that. So that collation error will be corrected today. We discovered that in preparation for the hearing. That's all we have.

1 JUDGE FRYSIAK: Any other matters?

2 MR. MILLER: Well, Your Honor, Mr. Thompson alluded
3 to the Motion for Summary Decision and denial of Selznick's
4 application which was filed. I assume that since we're here
5 today, Your Honor has denied that motion.

6 JUDGE FRYSIAK: But he countered your motion with a
7 Motion for Summary Decision in his favor. That gives you an
8 opportunity of 14 days to oppose it. That's the way I see it.
9 Do you see it differently?

10 MR. MILLER: No, Your Honor. But I can oppose his
11 counter-motion. But my motion is, I believe, right for
12 action. I mean, based on his opposition and mine, I don't get
13 a reply to his opposition.

14 JUDGE FRYSIAK: You're right. There is no reply
15 that's provided by the rules. But the rules provide that I
16 can rule on a Summary Decision even after the hearing has
17 begun.

18 MR. THOMPSON: Exactly.

19 JUDGE FRYSIAK: And I think it would be most
20 expeditious here if I wait for your opposition to the counter-
21 motion for Summary Decision.

22 MR. MILLER: Okay. And I also -- Mr. Thompson had
23 also filed an opposition to a motion to delete the forfeiture
24 provision and I assume Your Honor has not --

25 JUDGE FRYSIAK: Yes. You raise an interesting point

1 about a continuing violation and I have yet to research that
2 for my own satisfaction. So I will get to that in due time
3 and if I find in favor of the applicant on the misrepresen-
4 tation issue, the Motion to Delete is moot.

5 MR. THOMPSON: Exactly. That was our interpretation
6 of the rules, also.

7 JUDGE FRYSIAK: All right. And you have an out-
8 standing Opposition for Motion to Amend.

9 MR. MILLER: Right. I had asked for an extension of
10 time which Mr. Thompson consented to. It would normally be
11 due today and I asked for another week in view of the need to
12 prepare for today's hearing session.

13 JUDGE FRYSIAK: I guess we're clear then on where we
14 stand on everything.

15 MR. MILLER: Is Your Honor granting my motion for
16 extension of time then?

17 JUDGE FRYSIAK: I've granted it.

18 MR. MILLER: Thank you.

19 JUDGE FRYSIAK: I thought my girl had called you.
20 Didn't she call you?

21 MR. MILLER: Not on that one, no. I'd gotten two
22 orders on Monday, one was the witness notification and the
23 other was the document production of the letters where
24 privilege was claimed.

25 JUDGE FRYSIAK: I'm sorry you weren't notified about

1 the extension. Yes, you do have it. All right, for our
2 consideration then, let's hear the testimony presented by Ms.
3 Selznick. Mr. Thompson, are you ready to proceed?

4 MR. THOMPSON: Thank you, Your Honor. We are ready
5 to proceed this morning. Ms. Selznick is present in the
6 courtroom and I would ask Your Honor if you would please swear
7 the witness.

8 JUDGE FRYSIK: Yes.

9 MR. THOMPSON: I don't think she's testified before,
10 so I think we need to swear the witness.

11 (Whereupon,

12 LOREN F. SELZNICK

13 having first been duly sworn, was called as a witness herein
14 and was examined and testified as follows:)

15 JUDGE FRYSIK: For the record, would you please
16 state your full name and address?

17 WITNESS: Loren F. Selznick, 67 East Eleventh
18 Street, Apartment 401, New York, New York, 10003.

19 JUDGE FRYSIK: Thank you very much.

20 DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Would you -- Ms. Selznick, would you please look in
23 front of you and tell me if you have in front of you a
24 document that has previously been exchanged with Mr. Clanton's
25 attorney and with the Judge entitled Selznick Exhibit No. 4,

1 1991 Financial Certification Issue?

2 A Yes, I do.

3 Q I'd like to direct your attention, if I could,
4 please, to Page Number 5 of that particular document, a page
5 which at the top has the word Verification and I would ask you
6 do you recognize the signature on that page?

7 A Yes. That's my signature.

8 Q And is it your belief today that you signed this
9 verification on December 30, 1993?

10 A Yes, I did.

11 Q And I would ask you to direct your attention now to
12 the document as a whole, the four pages and the fifth
13 verification page and would you tell me whether you have any
14 changes or corrections to make to that particular document?

15 A No, I don't.

16 MR. THOMPSON: Your Honor, at this time, Selznick
17 would move the receipt into evidence of Selznick Exhibit No. 4
18 regarding the 1991 Financial Certification Issue.

19 JUDGE FRYSIK: All right. The document has been
20 marked for identification and is now offered.

21 (Whereupon, the document referred to
22 as Selznick Exhibit No. 4 was marked
23 for identification.)

24 MR. MILLER: I have some objections to portions of
25 it, Your Honor.

1 JUDGE FRYSIAK: All right.

2 MR. MILLER: Page 3.

3 JUDGE FRYSIAK: Page 3?

4 MR. MILLER: Yes. Beginning at the last word of the
5 third line on the page.

6 JUDGE FRYSIAK: Which line is that again?

7 MR. MILLER: Well, let's -- the third line of the
8 page. Let's take the sentence starting on the second word in
9 that line, "In my initial discussions ..." I object to that
10 sentence as hearsay. That is describing what someone else,
11 Mr. Dailey, told the witness and it is presumably offered as
12 proof of Mr. Dailey's state of mind and it is not proper for
13 this witness to testify as to the truth of the matters
14 contained in this statement. That is classic hearsay and I
15 object on that -- those grounds.

16 MR. THOMPSON: Your Honor, it's only her stating
17 what her understanding was at that time and again, I would
18 submit that it is not a statement that is going to figure in a
19 high place in our proposed findings. It's both background as
20 well as a statement indicating, in her narrative, as to how
21 she and Mr. Dailey reached whatever agreement they have about
22 the station and we would object to --

23 JUDGE FRYSIAK: I agree with Mr. Thompson. The
24 statements made don't prove anything irrelevant to the issue.
25 It simply states that a conversation had been made with Mr.

1 Dailey. I overrule your objection.

2 MR. MILLER: On Paragraph Number 7, the fifth line
3 down, the sentence beginning, "Mr. Dailey assured me ..."
4 continuing that he was referring back to Mr. Dailey's
5 willingness. I object to that portion of the sentence, again
6 as hearsay if it's offered for the truth of the matter
7 contained therein which is Mr. Dailey's state of mind. If
8 it's merely offered to show that those words were said and Ms.
9 Selznick heard those words, then I have no objection if it's
10 so limited.

11 MR. THOMPSON: Same response, Your Honor.

12 JUDGE FRYSIK: Yeah. Mr. Dailey had testified
13 under oath to this in his deposition. I don't see what harm
14 is done to have it included here.

15 MR. MILLER: Well, we have Mr. Dailey's testimony as
16 to -- you know, and that will speak for itself.

17 JUDGE FRYSIK: In any event, I overrule your
18 objection.

19 MR. MILLER: All right. Two lines further down, the
20 last two words of that line beginning, "... also discussing
21 ..." and then continuing the next line and follow through "...
22 Plotkin and Kahn ..." I had -- in other words --

23 JUDGE FRYSIK: I didn't track you. Would you state
24 that again?

25 MR. MILLER: All right. Two lines further down from

1 the previous objection.

2 JUDGE FRYSIAK: Beginning with the words what?

3 MR. MILLER: With the words, "... also discussing
4 ..."

5 JUDGE FRYSIAK: Okay. Got it.

6 MR. MILLER: All right. And then through, "...
7 Plotkin and Kahn ..." Ms. Selznick has vigorously claimed the
8 attorney/client privilege with the result -- with regard to
9 all communications between herself and her counsel, Mr.
10 Tannenwald. She is here apparently seeking to rely on the
11 fact that she discussed the application with Mr. Tannenwald.

12 I've been barred from delving into the nature of
13 those discussions, any details of those discussions, and I
14 don't think that the witness can rely and ask the Commission
15 to consider as evidence the fact that she had certain
16 discussions without knowing what those discussions consisted
17 of and I don't think it's proper for the witness to put into
18 evidence the fact that she discussed something with counsel
19 without going -- opening up what those discussions were and if
20 -- as Your Honor has upheld Ms. Selznick's claim of privilege,
21 I think she is barred from introducing evidence to show in any
22 way that she relied on such discussions and that's the purpose
23 of the phrase that I am referring to here.

24 MR. THOMPSON: Your Honor, two very brief responses.
25 First of all, I think this entire matter has already been

1 addressed in my view by your denial of Mr. Clanton's request
2 for the privileged documents and then secondly, even if Your
3 Honor had not had to face this issue before, there was nothing
4 in this sentence that indicates anything more than she
5 discussed things with her lawyer.

6 There are other references in her testimony in both
7 of these exhibits that talks about who she discussed things
8 with. If this sentence had something to say, Mr. Tannenwald
9 told her to do X and yet he didn't get the documents, then I
10 think he would have a valid objection. But that's not the
11 situation here.

12 MR. MILLER: Well, I would -- I would like to --

13 JUDGE FRYSIK: But there's no reference to any
14 document. This is something that is common in every appli-
15 cation where an attorney is representing an applicant. I
16 mean, I'm sure applicants rely on the attorneys' suggestions
17 and whatever. But you ask for documents and there are no
18 documents that have been addressed.

19 MR. THOMPSON: Nor even a specific piece of advice
20 that's referenced here or anywhere else.

21 MR. MILLER: Well, Your Honor, let me continue
22 because she -- a few lines further down, four lines further
23 down, the line beginning 301 and then she continues, "... and
24 from my discussion with my counsel ...", "... based on my
25 study of the instructions ... and from my discussion with my

1 | counsel ..." referring again to her discussion with Mr.
2 | Tannenwald. Now, she's telling the Commission here, based in
3 | part on her discussion with her counsel, she made certain
4 | decisions --

5 | JUDGE FRYSIAK: But sir, this issue has not been
6 | reduced to a writing.

7 | MR. MILLER: We don't know that.

8 | JUDGE FRYSIAK: And we don't have a document that
9 | has been identified that says they reduced a discussion to a
10 | writing.

11 | MR. MILLER: There were discussions -- there were
12 | written documents. She has claimed privilege on all
13 | communications between herself and Mr. Tannenwald. If Your
14 | Honor is allowing -- will allow me to ask Ms. Selznick under
15 | cross examination what these old discussions were -- but I
16 | believe that that falls within the claim of privilege again
17 | that she's steadfastly maintained. She's relying on her
18 | discussion with her counsel here, based on that discussion,
19 | and I've been barred from any discovery as to what those
20 | discussions were, as to what --

21 | JUDGE FRYSIAK: What follows logically from your
22 | argument is that the attorney/client privilege does not exist.
23 | It implicates that --

24 | MR. MILLER: No, sir.

25 | MR. THOMPSON: Exactly.

1 MR. MILLER: No, sir. I'm saying if the witness is
2 saying, "Based on my discussion with my counsel," she took
3 certain actions.

4 MR. THOMPSON: But that's not what it says. First
5 of all, that's not what it says here, Your Honor. What this
6 -- this is really in very similar posture to the statement we
7 just discussed and Your Honor ruled on a few minutes ago.
8 What she's doing is describing a series of events. She is not
9 getting into the details of any advice that may or may not
10 have been given by her counsel. She's given a chronology of
11 how she got to her certification and I would have the same
12 response here as I had a few moments ago.

13 MR. MILLER: She's relying in part on her discussion
14 with her counsel. That's what she's saying.

15 MR. THOMPSON: She's giving a chronology of how she
16 got to the point of certifying her financial qualifications
17 and in the process, she is discussing how she proceeded in --
18 and in fact, the instructions to FCC Form 301 appear not only
19 here, but in a subsequent place in this testimony.

20 MR. MILLER: Your Honor --

21 MR. THOMPSON: And you're simply trying to elevate
22 her reference of the fact that she discussed her case with her
23 lawyer into something that is taken out of context.

24 JUDGE FRYSIK: Well, anyway, I think enough has
25 been said on this. I overrule your objection.

1 MR. MILLER: Paragraph 10 on Page 4 is -- I object
2 is accumulative and again hearsay. Mr. Dailey's testimony
3 speaks for itself. The witness is doing nothing more than
4 giving her interpretation of what Mr. Dailey has said. She's
5 attached portions of his deposition and I see no value to
6 Paragraph 10.

7 JUDGE FRYSIK: Well, it does have a bearing on her
8 misrepresentation issues.

9 MR. MILLER: Your Honor, she is referring to his
10 testimony which he gave well after the following application.
11 The misrepresentation goes to the initial certification in
12 1991.

13 MR. THOMPSON: I'm sorry. Your Honor --

14 MR. MILLER: And when she says Mr. Dailey has
15 testified under oath, that refers to testimony given in 1993.

16 MR. THOMPSON: Of course, it does. I don't
17 understand. I'm lost. I don't understand what Mr. Miller's
18 point is, Your Honor. I mean, all the sentence does is
19 introduce the fact that Mr. Dailey has given some testimony
20 and to the extent that he thinks it's accumulative, my answer
21 is the testimony will speak for itself and in fact, if Mr.
22 Miller in his proposed findings wants to argue that the actual
23 words of Mr. Dailey are different than Ms. Selznick's
24 characterization, he'll be free to do so and you'll be
25 persuaded by that.

1 JUDGE FRYSIAK: In any event, it does predate the
2 filing of the application. "... he told me ..." -- on the
3 third line of Paragraph Ten, "... he told me prior to December
4 13, 1991 ..." So the objection's overruled.

5 MR. MILLER: That's all the objections I had to
6 that.

7 JUDGE FRYSIAK: All right. Thank you. I'll receive
8 Exhibit 4 in evidence.

9 (Whereupon, the document referred to
10 as Selznick Exhibit No. 4 was
11 received into evidence.)

12 MR. THOMPSON: Thank you, Your Honor. We've also
13 handed the reporter with two copies of a document entitled
14 Selznick Exhibit No. 5, Present Financial Qualifications.
15 This is a four-page document, the fourth page of which is a
16 verification page and I would ask Ms. Selznick if she has the
17 document in front of her that is marked Selznick Exhibit No.
18 5.

19 WITNESS: Yes, I do.

20 MR. THOMPSON: Your Honor, we'd ask that this
21 document be marked for identification purposes as Selznick
22 Exhibit No. 5, Present Financial Qualifications.

23 JUDGE FRYSIAK: Yes, it may be marked.

24 (Whereupon, the document referred to
25 as Selznick Exhibit No. 5 was marked

1 for identification.)

2 MR. MILLER: And I'd ask the witness if she could
3 turn to the fourth page of the document and tell me if she
4 recognizes the signature on that page.

5 WITNESS: Yes, I do. That's mine.

6 BY MR. MILLER:

7 Q And is it your belief today that on December 30,
8 1993, you, in fact, executed this verification?

9 A Yes, I did.

10 Q And looking now through the entirety of the four-
11 page document, do you have any corrections or clarifications
12 to make to what's been marked Selznick Exhibit No. 5?

13 A I do.

14 Q Could you tell me what the first of any
15 clarifications or corrections is?

16 A First, on the first page, there's a typo, four lines
17 --

18 Q Which paragraph?

19 A Paragraph Two, four lines up from the bottom.

20 Q Fourth line from the bottom of Page 1 and --

21 A Almost at the end of the line, the word "proposed"
22 should be "propose" without the D.

23 Q So strike the D in the word "proposed" on the fourth
24 line from the bottom of Page 1. Any other corrections or
25 clarifications to this document?

1 A Yes. On Page 2.

2 Q Page 2 of the document.

3 A Paragraph 5.

4 Q Paragraph Number 5.

5 A In the second sentence --

6 Q The second sentence of Paragraph 5.

7 A The dollar amount should be \$100,700.

8 Q So on the very last line of Page 2 of Exhibit

9 No. 5, you would like to strike the figure \$147,000 and

10 replace it with \$100,700.

11 A That's correct.

12 Q All right. Any other corrections or additions to be

13 made?

14 A Yes. Going onto Page 3 in the same paragraph, on

15 the second line where it says \$110,000, that should also be

16 \$100,700.

17 Q All right. So on Page 3 of the document, second

18 line from the top, the figure should read \$100,700. All

19 right. Any other corrections or changes to the document?

20 A Yes. In Paragraph 6, on the second line, again

21 \$110,000 should be changed to \$100,700 and then after the word

22 "sufficient," I need to add the word following words, "with my

23 loan" --

24 Q And that's a comma after the "sufficient" or not?

25 A I don't know.

1 Q All right. Well, don't -- I mean, it's your
2 testimony. Whatever you want.

3 JUDGE FRYSIK: "Is sufficient with my ..." What?

4 WITNESS: "... with my loan commitment of \$40,000
5 from Mr. Dailey." And then in the next line, where it says --

6 BY MR. MILLER:

7 Q Well, now, what does the -- does the sentence then
8 remain -- the rest of the words in the sentence remain as they
9 are. Is that correct?

10 A Yes.

11 Q All right. So, let's stop right there to be sure we
12 have it. What you've done in the second line of Paragraph 6
13 is you have corrected the figure to read \$100,700 and the
14 sentence as corrected now reads, "... is sufficient with my
15 loan commitment of \$40,000 from Mr. Dailey to meet my
16 estimated costs of \$109,460." Is that correct?

17 A That's right.

18 Q I'm sorry. Then you were about to say that in the
19 next sentence --

20 A In the next sentence, I would strike out "in
21 addition."

22 Q Strike the two words "in addition," all right.

23 A And then right before it says "40,000 --

24 Q Yes?

25 A -- I would put in "as high as."

1 Q So after the word "of" in the third line of
2 Paragraph 6, you would insert the three words "as high as."

3 A That's correct.

4 Q Any other changes to that sentence?

5 A No. And I have no other changes to this document.

6 MR. THOMPSON: All right. Your Honor, we would move
7 the receipt as corrected and clarified of Selznick Exhibit
8 No. 5.

9 JUDGE FRYSIK: What about the attachments? Are
10 they attached to the exhibit?

11 MR. THOMPSON: Yes, they are, Your Honor, but there
12 are no corrections. I believe the corrections which she just
13 made --

14 JUDGE FRYSIK: Oh, I thought you were offering the
15 exhibit.

16 MR. THOMPSON: The exhibit and the attachments
17 thereto.

18 JUDGE FRYSIK: Okay. You're --

19 MR. THOMPSON: Right. The attachments are referred
20 to in the text of the exhibits themselves.

21 JUDGE FRYSIK: All right. Mr. Miller?

22 MR. MILLER: Yes. Your Honor, with respect to the
23 three-page exhibit, I have a general objection and I would ask
24 that any acceptance of the entire exhibit, the three-page
25 testimony of Ms. Selznick, be conditioned on Your Honor's

1 acceptance of her recently filed Petition for Leave to Amend.

2 JUDGE FRYSIK: All right. I'll receive it subject
3 to strike.

4 MR. MILLER: Because it -- otherwise, it's a
5 variance from the application.

6 JUDGE FRYSIK: I appreciate your position.

7 MR. THOMPSON: We fully understand that, Your Honor.

8 MR. MILLER: Specifically on -- also, on Page 2,
9 Paragraph 3, the fourth line down, the sentence beginning,
10 "With respect to the studio ..." This is -- the objection to
11 the sentence is based on hearsay. If it is offered for the
12 proof that Ms. Selznick will not have to pay for studio
13 improvements or the first six months of rent, it is strictly
14 hearsay.

15 She's not offering this from her own personal
16 knowledge. She's merely reciting what someone else has told
17 her and if this is going to be evidence as to her present
18 financial condition -- present financial qualifications and
19 evidence that she's putting in for the Commission to accept,
20 that she will not have to make those payments as part of her
21 initial construction and operating costs, then I object as
22 being beyond the ken of the witness to so testify.

23 MR. THOMPSON: Your Honor, my response again, could
24 be very brief. I've sat through these hearings for over a
25 dozen years and I've never heard this objection before.

1 Witnesses obtain lots of information from equipment manufac-
2 turers, from people that own property, and then can have an
3 understanding and be cross examined, I might add, Your Honor,
4 to see if there's any logical or reasonable basis for their
5 understanding, and that's what I would anticipate what happens
6 today. If Mr. Miller has questions about this particular
7 understanding, he can cross examine and --

8 JUDGE FRYSIAK: And I agree. This is simply
9 background information which has served as a basis for an
10 action taken. The action is independent of this statement.
11 So I view it as simply background, giving it some coherency to
12 the testimony and decisions made. Objection's overruled.

13 MR. MILLER: Now, with respect to Appendix B which
14 is a portion of Mr. Dailey's deposition, my understanding of
15 the rules is that when one party introduces part of the
16 deposition, the other party may seek to introduce additional
17 pages from the deposition.

18 JUDGE FRYSIAK: Yeah. That's correct.

19 MR. MILLER: And I have additional pages which I
20 would like to introduce.

21 JUDGE FRYSIAK: All right. Fine.

22 MR. MILLER: I have copies -- I have two copies for
23 the reporter, one for Your Honor, and one for Mr. Thompson.
24 Let me first just recite the page numbers, but they are on the
25 bottom of the specific pages, but just so that the record will

1 be clear. I seek to introduce Pages 31, 33, 34, 43, 44, 45,
2 46, 47, 52, 53, 54, 55, 58, 73, 74, 75, 76, 77, 78, 79, 80,
3 84, 88, 89, 90, 92, 95, 96, 97, 99, 101, 102, 103, 109, and
4 110.

5 JUDGE FRYSIK: That's Mr. Dailey's deposition.

6 MR. MILLER: Right. And if Your Honor pleases, this
7 could be marked as Clanton Exhibit 2.

8 JUDGE FRYSIK: Exhibit what? I lost you.

9 MR. MILLER: I believe it would be 2. I think we
10 had one exhibit on the comparative case. If I have the
11 numbers wrong, you can change them.

12 (Whereupon, the document referred to
13 as Clanton Exhibit No. 2 was marked
14 for identification.)

15 JUDGE FRYSIK: Are there any -- well, there's no
16 objection because this is right.

17 MR. THOMPSON: Only to this extent, Your Honor.
18 First of all, I'm not sure he's moved to let it be received
19 yet, but -- so I may be premature and therefore, I'll keep it
20 very brief. I agree with Mr. Miller. I think he certainly
21 has the right to introduce as much of the deposition into
22 evidence as necessary.

23 Mr. Blumenthal has taken the position for many years
24 and the Commission's recently affirmed him in the Charisma
25 case last year, that actually in these cases, all pleadings

1 and matters that are in the dockets are, in fact, part of the
2 record, and the Court of Appeals in my case last month was
3 astounded when the Commission argued that that wasn't the
4 case.

5 JUDGE FRYSIAK: That was indeed the case?

6 MR. THOMPSON: But the only thing that wouldn't be
7 fair if this is introduced in as an exhibit and given some
8 kind of additional weight beyond the weight of everything
9 that's in Mr. Dailey's deposition is if, for example, Mr.
10 Miller or I would choose to use a page of the deposition that
11 is, for example, a continuation of a discussion that began on
12 the prior page.

13 So that knowing Your Honor's fairness in these
14 matters, I would simply indicate that I have no objection
15 whatsoever to receiving any of the pages of the deposition as
16 long as I would be able to argue in my reply brief that a
17 particular point that Mr. Miller was making was, in fact,
18 taken out of context and simply refer Your Honor --

19 JUDGE FRYSIAK: Yes. Well, you always have that.

20 MR. THOMPSON: Thank you very much. Well, that's
21 the only point of clarification that I wanted to make and I
22 will not have an objection at what -- at any point that he may
23 want to move the receipt of these pages.

24 JUDGE FRYSIAK: All right. I'll receive Clanton's
25 Exhibit 2.

1 MR. MILLER: Thank you, Your Honor.

2 (Whereupon, the document referred to
3 as Clanton Exhibit No. 2 was received
4 into evidence.)

5 MR. MILLER: With respect to the appraisals for Ms.
6 Selznick's apartments, Exhibits E and F, I have some voir
7 dire.

8 JUDGE FRYSIK: Sure.

9 MR. MILLER: Thank you. Let me preface this by
10 giving my understanding of Your Honor's ruling on the request
11 that I made to cross examine the individual who made the
12 appraisals. I understand Your Honor's position, in view of
13 Ms. Selznick's indication that she had personally supervised
14 the appraisals, that the appraiser himself would not be
15 required to appear for cross examination. So I have some
16 questions of the witness as to her competence to sponsor these
17 appraisals.

18 JUDGE FRYSIK: Okay. Go ahead.

19 VOIR DIRE

20 BY MR. MILLER:

21 Q Ms. Selznick, have you ever taken any formal courses
22 in appraising real estate?

23 A No.

24 Q Have you ever personally appraised real estate on
25 behalf of someone else?